

TORNILLO ISD

Post Office Box 170  
Tornillo, Texas 79853

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JUL -2 2010

FCC



June 23, 2010

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, Maryland 20743

Ms. Dortch:

Please accept this letter as a request for a waiver. This waiver request is in reference to:

Form 471 Application Number:	432427
Funding Year:	2004
Applicant's Form Identifier:	TISD 04
Funding Request Number:	1202644
Billed Entity Number:	142108
FCC Registration Number:	0013525662
SPIN:	143022561
Service Provider Name:	Complete Networking Solutions
Service Provider Contact Person:	Mike Salas
Administrator's Decision on Appeal:	June 15, 2010

CC Docket No. 02-6

CC Docket No. 96-45

On behalf of our school district, I would like to formally appeal the denial decision as stated in the Administrator's Decision on Appeal-Funding Year 2004-2005 Letter received June 18, 2010.

As I understand it, the lack of a written contract between the district and the vendor prior to the commencement of the project has been the only technicality in question still unresolved. Due to our inability to produce a signed document (although an unsigned version was found), along with memories dimmed by the passage of six years of time, we have been unable to resolve this ONE issue to the satisfaction of those who have audited us on your behalf. Since both the vendor and I agree that a firm agreement was in place at the time, we attempted to resolve this by submitting an affirmation of contract – drafted by one attorney and reviewed by another, independent attorney – that is completely consistent with Texas contract law. This good faith attempt has also been summarily rejected as well. I feel the “strike zone” being called on us is too tight.

Paul Vranish – Superintendent  
Email: VranishPL@tisd.us

(915) 765-3007 – Phone  
(915) 764-2120 – Fax

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It is certain that the PIA reviewers at USAC itself failed to catch this problem back in 2004 before a Funding Commitment Decision Letter was approved. This was no small matter as the funding for this project was in the amount of \$195,101.73. Had this technicality been caught then, we would have been able to fix the mistake promptly. Why are we “burned” when USAC’s failure contributed to the current situation?

Allow me to refer to FCC generalized comments, “denial of funding requests inflicts undue hardship on the applicants and in these cases, we find that the applicants have demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest.” The denial of this appeal inflicts undue hardship on the district because it would have to pay back \$183,011.40 almost 6 years after USAC originally approved and funded the project in question. We are the fourth poorest school district in Texas operating during a time of budget cutbacks. Refunding this amount will directly result in four teacher layoffs as I have no “slush fund” to cover this unplanned expense.

Also in FCC comments, “as the effective date of this Order, we require USAC to provide all E-Rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and an additional opportunity to file the required certifications.

USAC shall inform applicants promptly in writing of any and all ministerial or clerical errors that are detected in their applications, along with a clear and specific explanation of how the applicant can remedy those errors. USAC shall also inform applications promptly in writing of any missing or incomplete certifications. Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or re-file their FCC Form 470, FCC Form 471 or associated certifications. USAC shall apply this directive to all pending applications and appeals even if such applications or appeals are no longer within the filing window.” USAC in this case, failed to give us the opportunity to remedy the error back in the 2004-2005 funding year.

Please refer to the attached Memorandum and Ratification of Agreement signed and dated by Paul Vranish, Superintendent Tornillo Independent School District and Mike Salas, Complete Networking Solutions on May 26, 2010. The purpose of the document is to affirm and ratify the contractual agreement between both parties regarding the installation of internal connections and information services i.e. fiber optic cable during the 2004 funding year.

According to state requirements, a person can accept an offer by a written contract, a bilateral contract or a unilateral contract. We believe a unilateral contract existed between both parties because the receipt of goods and services were rendered by the vendor as approved and funded by USAC. Please refer to the attached letter by Mike Salas that helps support our position.

It should be noted, and we are sure you agree, that there is no question that the equipment and services were delivered and installed that year, that the price for this procurement was well within the norms for a project of that type in that funding year, and that there is no question as to the appropriate use of the fiber backbone, etc. – the District still uses them on a daily basis as it acts as the main network back bone that connects our 2 campuses. Finally the project “makes sense” in the context of the internal assessment conducted at the time which established that we needed a high speed connection between campuses.



The District would like to make it clear that in no way have these funds, equipment and services been used for anything other than the intended purposes. As stated earlier, we are the fourth poorest school district in Texas; the District relies on E-Rate funding to provide its students and teachers with an opportunity to experience technology as they would in urban areas. We are not in the business of manipulating or cheating programs to fund frivolous technology projects. Given the preponderance of our good faith efforts to comply with the program standards, it is our formal request that you overturn the SLD decision on this case with a favorable ruling for Tornillo ISD and allow us to put this matter behind us.

Sincerely yours,

A handwritten signature in black ink, appearing to read "P. Vranish".

Paul Vranish

CC: Mike Salas (Complete Networking Solutions)

Attachments: USAC Administrator's Decision on Appeal, Memorandum and Ratification of Agreement, Supporting Letter from Mike Salas



**Universal Service Administrative Company**  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2004-2005**

June 15, 2010

Paul Vranish  
Tornillo Indep School District  
P.O. Box 170  
Tornillo, TX 79853

Re: Applicant Name: TORNILLO INDEP SCHOOL DISTRICT  
Billed Entity Number: 142108  
Form 471 Application Number: 432427  
Funding Request Number(s): 1202644  
Your Correspondence Dated: June 04, 2010

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2004 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1202644  
Decision on Appeal: **Denied**  
Explanation:

- During the site visit, the Tornillo Independent School District (the District) was asked to provide a copy of the signed and dated contract. The record shows that you stated that you tried to determine if the vendor was under a State Master Contract at the time of the Form 471 filing; however, it was found that one did not exist. You also stated that you believed the QISV (Qualified Information Services Vendor) status negated the need for any contract, and the lack of a formal contract between the district and the vendor was only a technicality and could have been an oversight on the person in charge of the application at the time. On appeal, you provided a Memorandum and Ratification of Agreement between the District and service provider; however, this document is dated May 26, 2010. You also stated that according to state requirements, a person can accept an offer by a written contract, bilateral contract or a unilateral contract and

you believe that a unilateral contract existed between both parties because the receipt of goods and services were rendered by the service provider as approved and funded by USAC. However, the rules of this support mechanism state that the applicant must sign and date the contract prior to certifying the Form 471. In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested.<sup>1</sup> The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services.<sup>2</sup> You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

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<sup>1</sup> *Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003).

<sup>2</sup> See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2003) at page 20.

**MEMORANDUM AND RATIFICATION OF AGREEMENT**

STATE OF TEXAS

COUNTY OF El Paso

The purpose of this document is to affirm and ratify the contractual agreement between Tornillo Independent School District and Complete Networking Solutions regarding the installation of internal connections and information services i.e fiber optic cable.

Wherein, the parties hereto entered into a binding contractual agreement for the installation of fiber optic cable initially for the funding year 2004.

The parties entered into negotiations and Complete Networking Solutions supplied Tornillo Independent School District full and complete bid information and documentation for the project which in due course was agreed upon and accepted by Tornillo Independent School District in all aspects, thereby forming a mutually agreeable binding contractual agreement for the installation of fiber optic cable.

The project was fully and satisfactorily completed by Complete Networking Solutions and the resulting internal connections and information services were accepted by Tornillo Independent School District.

Whereas, both parties now herein affirm and ratify said contractual agreement in all aspects, terms and conditions for all purposes.

Dated: May 26, 2010.

Tornillo Independent School District

By: [Signature]  
Tornillo ISD

Complete Networking Solutions

By: [Signature] 5-26-2010  
Mike Salas  
President

May 9, 2010

Paul Vranish, Superintendent  
Tornillo Indep School District  
PO Box 170  
Tornillo, TX 79583

RE:      Form 471 Application Number:            432427  
            Funding Year:                            2004  
            Applicant's Form Identifier:            TISD 04  
            Billed Entity Number:                  142108  
            FCC Registration Number:              0013525662  
            SPIN:                                        143022561  
            Service Provider Name:                Complete Networking Solutions  
            Service Provider Contact Person:      Mike Salas

According to the Notification of Commitment Adjustment Letter for Funding Year 2004 originated on April 7, 2010, during a review USAC determined that Tornillo ISD did not have a contract in place at the time of submission of the Form 471. My office has been unable to produce our copy of the contract initiated prior to the filing of the Form 471 and contingent upon the school's approval of E-Rate funding.

Consideration needs to be given to the numerous discrepancies in the information provided for completing the process and the fact that there was no contract number listed on the 471 at the time that the FRN was approved and the Funding Commitment Decision Letter was issued.


It is customary for Complete Networking Solutions to obtain a signed contract when selected as a Service Provider for the filing of a 471. Each contract is enacted contingent upon funding. However, the guidance offered by the Universal Service Administrative Company is inconsistent and often contradictory of other sections of such guidance.

*USAC's Step 4: Contract Guidance states: Obtaining the service provider signature and date is not a program requirement, but state and/or local contract law may include this or other compliance requirements. (Reference: Highlighted section of attached.)* In that statement and numerous other sections of the rules and regulations, it requires applicants and service providers to meet all state contract requirements. We understand that according to state requirements, a person can accept an offer by one of numerous methods including: a written contract, a bilateral contract or a unilateral contract.

A unilateral contract suggests undeniable proof of the receipt of goods and services that were approved and funded on the FRN. All materials and services were purchased and installed within the timeframe of the funding period: July 1, 2004 through June 30, 2005. The agreement between Tornillo ISD and Complete Networking Solutions was clear, understood and contingent upon E-Rate Funding. The project did and continues to follow the purpose of the E-Rate Program to provide your school affordable access to telecommunications and information services.


Sincerely,  
Mike Salas dba Complete Networking Solutions





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### Step 4: Contract Guidance

Applicants and service providers must meet all Federal Communications Commission (FCC) and state contract requirements.

CONTRACTS	Step 4: Select a Service Provider
<p>In general, a contract is a binding agreement, enforceable by law, between two or more parties that creates an obligation to do or not do something. Contract definitions and requirements are contained in each state's or territory's contract law.</p> <p>Except for services to be delivered under non-contracted tariffed or month-to-month arrangements, FCC rules require that an applicant sign a contract with the service provider before signing and submitting a completed <i>Services Ordered and Certification Form</i> (Form 471). Applicants must be able to demonstrate that they had a signed and dated contract in place at the time they submitted a completed Form 471. Applicants must also comply with state and/or local contract law. Obtaining the service provider signature and date is not a program requirement, but state and/or local contract law may include this or other compliance requirements.</p> <p>Acceptable standards for applicant signature and dated contract examples</p> <ul style="list-style-type: none"> <li>Applicant handwritten signature and signature date,</li> <li>Date contract awarded may be contained in the body of the contract, or</li> <li>Date contract awarded may be in the opening statements of the contract</li> </ul> <p>When state and/or local contract law does not require the applicant to sign and date the contract the applicant will be given the opportunity to complete a certification statement. The certification statement affirms that the applicant is compliant with their state and/or local contract law.</p> <p>Verbal agreements and quotes do not meet FCC requirements. Generally purchase orders do not meet USAC contract guidelines. We recommend that if applicants intend to use a purchase order as their contract they check their state and/or local contract laws to ensure that purchase orders meet state and/or local contract requirements.</p> <p><b>Establishing Forms 470</b></p> <p>The establishing <i>Description of Services Requested and Certification Form</i> (Form 470) is the form that serves as the basis for the competitive bidding process. For a multi-year contract, the establishing Form 470 for that contract could have been posted in a previous funding year.</p> <p><b>Qualified existing contracts</b></p> <p>A qualified existing contract is:</p> <ul style="list-style-type: none"> <li>A signed, written contract executed pursuant to the posting of a Form 470 in a previous funding year.</li> <li>A contract signed on or before July 10, 1997 and reported on a Form 470 in a previous year as an existing contract.</li> </ul> <p><b>Tariffed services provided under a contract</b></p> <p>A tariffed service provided under contract is a service offered under one or more tariffs and for which a contract has been signed. In all cases, funding requests for which a contract has been signed should be reported as contracted services. Form 471 Block 5 should include the Contract Number in Item 15 (not a "T"), the Contract Award Date in Item 18, and the Contract Expiration Date in Item 20.</p> <p><b>STATE MASTER CONTRACTS</b></p> <p>A state master contract is a contract that is competitively bid and put in place by a state government entity for use by others.</p> <p><b>Filing the Form 470</b></p>	<ul style="list-style-type: none"> <li>Construct an Evaluation</li> <li>Bid Evaluation Matrix</li> <li>28-day Waiting Period</li> <li>Contract Guidance</li> <li>State Replacement Contracts</li> </ul>

**If the state files a Form 470**, then the applicant may cite the state's Form 470 on its Form 471. The state must follow a competitive bidding process pursuant to FCC requirements and state procurement law.

The applicant is required to follow the applicable provisions of the state master contract and state and local procurement laws. No separate bidding documents or contracts are required by the applicant citing the state's Form 470 other than what is required by the state master contract and state and local procurement laws. The signed state master contract between the state and the service provider meets the FCC signed contract requirement.

**If the applicant files a Form 470** and considers a state master contract as one of the bids, the applicant must follow a competitive bidding process pursuant to FCC requirements and state and local procurement law. Price must be the primary factor - that is, it must be weighed more heavily than any other factor.

If the applicant selects the state master contract as the most cost-effective alternative, the applicant is required to follow the applicable provisions of the state master contract, state contract law, and state and local procurement laws. The signed state master contract between the state and the service provider meets the FCC signed contract requirement.

#### **Reporting the Contract Award Date for state master contracts**

The Contract Award Date shall not be earlier than the 29th day after the posting of the Form 470. If an applicant files its own Form 470 and chooses either a new or a pre-existing state master contract as the most cost-effective bid, the applicant should record its decision to purchase off the state master contract after the bidding process is complete and to record the date of this memorialization as the Contract Award Date on the Form 471.

#### **Purchase orders or other state master contract requirements for applicants**

If the state master contract requires the issuance of purchase orders or contains other requirements for applicants, the applicants must meet those requirements. For example, if the state master contract requires the applicant to issue a purchase order by July 1, then the applicant is required to meet that deadline.

#### **MULTI-YEAR CONTRACTS AND CONTRACTS INCLUDING VOLUNTARY EXTENSIONS**

A multi-year contract means a contract that covers more than one year. For example, a three-year contract would expire at the end of the third year. A contract including voluntary extensions means that the contract expires at the end of its original term and may be voluntarily extended for one or more years pursuant to the provisions in the contract.

To comply with FCC competitive bidding requirements, the applicant must indicate in its Request for Proposals (RFP) and Item 7 on the Form 470 its intent to enter into a multi-year contract for services or a contract that includes voluntary extensions. The applicant must also indicate the type of services for which it is seeking a multi-year contract.

**When voluntary extensions are indicated in Item 13 of Form 470 and in the RFP, if an RFP was used, the applicant does not have to post a new Form 470. In the event the Form 470 does not indicate voluntary extensions, the contract cannot extend the contract beyond its original expiration date without posting a new Form 470.**

FCC rules grant a limited extension of the competitive bidding rules for contracts for non-recurring services. "[C]ontracts for nonrecurring services may be voluntarily extended to coincide with the appropriate deadline for the implementation [of delivery and installation for nonrecurring services]. Parties may not, however, extend either contractual provisions beyond the dates established by the Commission's rules without complying with the competitive bidding process." (FCC 01-195, released June 29, 2001). If an applicant is granted an extension of time for delivery and installation of non-recurring services, the applicant may extend the relevant contract without rebidding. Applicants should file a Form 500 to notify USAC of such contract extensions.

#### **Multi-year contracts for newly-eligible services or entities**

If the original Form 470 or RFP did not include the newly-eligible services or entities, the applicant will be required to post a new Form 470 for those services.



**Step 3** : Open a Competitive Bidding Process

**Step 5** : Calculate the Discount Level



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